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Professional Collection Consultants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

WESTERN WORLD INSURANCE COMPANY,)	CASE NO.: 2:15-cv-02342 MWF-VBKx
)	
Plaintiff and)	ANSWER TO COMPLAINT BY
Counter-Claim Defendant,)	DEFENDANT PROFESSIONAL
-vs-)	COLLECTION CONSULTANTS;
)	COUNTER-CLAIM AGAINST
PROFESSIONAL COLLECTION)	WESTERN WORLD INSURANCE
CONSULTANTS,)	COMPANY; and
)	DEMAND FOR JURY TRIAL
Defendant and)	
Counter-Claimant.)	

Defendant PROFESSIONAL COLLECTION CONSULTANTS, appearing for
itself and itself alone, hereby appears and answers the allegations of Plaintiff's
Complaint as follows:

1. In answer to the allegations contained in Paragraph 1 of Plaintiff's
Complaint, this answering defendant admits each and every allegation contained
therein.

2. In answer to the allegations contained in Paragraph 2 of Plaintiff's
Complaint, this answering defendant admits each and every allegation contained

1 therein.

2 3. In answer to the allegations contained in Paragraph 3 of Plaintiff's
3 Complaint, this answering defendant admits each and every allegation contained
4 therein.

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6 4. In answer to the allegations contained in Paragraph 4 of Plaintiff's
7 Complaint, this answering defendant admits each and every allegation contained
8 therein.

9 5. In answer to the allegations contained in Paragraph 5 of Plaintiff's
10 Complaint, this answering defendant admits each and every allegation contained
11 therein.

12 6. In answer to the allegations contained in Paragraph 6 of Plaintiff's
13 Complaint, this answering defendant admits each and every allegation contained
14 therein.

15 7. In answer to the allegations contained in Paragraph 7 of Plaintiff's
16 Complaint, this answering defendant admits each and every allegation contained
17 therein.

18 8. In answer to the allegations contained in Paragraph 8 of Plaintiff's
19 Complaint, this answering defendant admits each and every allegation contained
20 therein.

21 9. In answer to the allegations contained in Paragraph 9 of Plaintiff's
22 Complaint, this answering defendant admits each and every allegation contained
23 therein.

24 10. In answer to the allegations contained in Paragraph 10 of Plaintiff's
25 Complaint, this answering defendant admits each and every allegation contained
26 therein.

1 11. In answer to the allegations contained in Paragraph 11 of Plaintiff's
2 Complaint, this answering defendant admits each and every allegation contained
3 therein.

4 12. In answer to the allegations contained in Paragraph 12 of Plaintiff's
5 Complaint, this answering defendant admits each and every allegation contained
6 therein.

7
8 13. In answer to the allegations contained in Paragraph 13 of Plaintiff's
9 Complaint, this answering defendant admits each and every allegation contained
10 therein.

11 14. In answer to the allegations contained in Paragraph 14 of Plaintiff's
12 Complaint, this answering defendant admits each and every allegation contained
13 therein.

14 15. In answer to the allegations contained in Paragraph 15 of Plaintiff's
15 Complaint, this answering defendant admits each and every allegation contained
16 therein.

17 16. In answer to the allegations contained in Paragraph 16 of Plaintiff's
18 Complaint, this answering defendant admits each and every allegation contained
19 therein.

20 17. In answer to the allegations contained in Paragraph 17 of Plaintiff's
21 Complaint, this answering defendant admits each and every allegation contained
22 therein.

23 18. In answer to the allegations contained in Paragraph 18 of Plaintiff's
24 Complaint, this answering defendant admits each and every allegation contained
25 therein.

26 19. In answer to the allegations contained in Paragraph 19 of Plaintiff's
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1 Complaint, this answering defendant admits each and every allegation contained
2 therein.

3 20. In answer to the allegations contained in Paragraph 20 of Plaintiff's
4 Complaint, this answering defendant admits each and every allegation contained
5 therein.

6 21. In answer to the allegations contained in Paragraph 21 of Plaintiff's
7 Complaint, this answering defendant admits each and every allegation contained
8 therein.

9
10 22. In answer to the allegations contained in Paragraph 22 of Plaintiff's
11 Complaint, this answering defendant admits each and every allegation contained
12 therein.

13 23. In answer to the allegations contained in Paragraph 23 of Plaintiff's
14 Complaint, this answering defendant admits each and every allegation contained
15 therein.

16 24. In answer to the allegations contained in Paragraph 24 of Plaintiff's
17 Complaint, this answering defendant admits each and every allegation contained
18 therein.

19 25. In answer to the allegations contained in Paragraph 25 of Plaintiff's
20 Complaint, this answering defendant admits each and every allegation contained
21 therein.

22 26. In answer to the allegations contained in Paragraph 26 of Plaintiff's
23 Complaint, this answering defendant admits each and every allegation contained
24 therein.

25 27. In answer to the allegations contained in Paragraph 27 of Plaintiff's
26 Complaint, this answering defendant admits each and every allegation contained
27 therein.

1 28. In answer to the allegations contained in Paragraph 28 of Plaintiff's
2 Complaint, this answering defendant admits each and every allegation contained
3 therein.

4 29. In answer to the allegations contained in Paragraph 29 of Plaintiff's
5 Complaint, this answering defendant admits each and every allegation contained
6 therein.

7 30. In answer to the allegations contained in Paragraph 30 of Plaintiff's
8 Complaint, this answering defendant admits each and every allegation contained
9 therein.

10 31. In answer to the allegations contained in Paragraph 31, this answering
11 defendant has no information or belief on the subjects mentioned therein to enable it
12 to answer the allegations thereof, and, basing its denial on that ground, this answering
13 defendant denies each and every allegation contained therein. By way of further
14 answer, this answering defendant did not even know that Hudson claimed to have
15 reported what he believed to be illegal conduct to the California Employment
16 Department in 2007 until this answering defendant was served with a copy of his
17 proposed complaint against it on January 13, 2015 at a mediation session attempting
18 to resolve Hudson's complaint against this answering defendant.

19 32. In answer to the allegations contained in Paragraph 32, this answering
20 defendant has no information or belief on the subjects mentioned therein to enable it
21 to answer the allegations thereof, and, basing its denial on that ground, this answering
22 defendant denies each and every allegation contained therein.

23 33. In answer to the allegations contained in Paragraph 33, this answering
24 defendant denies each and every allegation contained therein. By way of further
25 answer, this answering defendant affirmatively alleges that on or about June 17, 2013,
26 Hudson was counseled about his job performance and complained that his supervisor
27 was not fairly distributing accounts. This charge was investigated; the supervisor was
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1 discharged; and the accounts were re-distributed. A few days later, Hudson expressed
2 satisfaction with the resolution. In addition, during that meeting, Hudson expressed
3 an opinion that PCC was doing something illegal, but when asked to specifically
4 identify the practices that he thought were illegal or questionable, he shrugged his
5 shoulders and refused to provide any further response or details.

6 34. In answer to the allegations contained in Paragraph 34, this answering
7 defendant admits each and every allegation contained therein.

8 35. In answer to the allegations contained in Paragraph 35, this answering
9 defendant admits that on or about September 11, 2013, Shields' counsel met with an
10 Assistant United States Attorney who advised the Shields' counsel that the
11 government considered Shields a target. By way of further answer, when Shields'
12 counsel provided the Assistant United States Attorney with additional information, the
13 Assistant United States Attorney refused to communicate further with Shields'
14 counsel because the government had not yet discovered sufficient facts upon which
15 to initiate criminal charges against anyone and the government was continuing to
16 investigate. By way of further answer, this answering defendant denies that any law
17 enforcement agency, including but not limited to the F.B.I. and the United States
18 Department of Justice, has ever investigated Defendant Professional Collection
19 Consultants for illegal debt collection practices.

20 36. In answer to the allegations contained in Paragraph 36, this answering
21 defendant has no information or belief on the subjects mentioned therein to enable it
22 to answer the allegations thereof, and, basing its denial on that ground, this answering
23 defendant denies each and every allegation contained therein.

24 37. In answer to the allegations contained in Paragraph 37, this answering
25 defendant has no information or belief on the subjects mentioned therein to enable it
26 to answer the allegations thereof, and, basing its denial on that ground, this answering
27 defendant denies each and every allegation contained therein.

1 38. In answer to the allegations contained in Paragraph 38, this answering
2 defendant admits each and every allegation contained therein. By way of further
3 answer, Hudson was terminated for theft and sabotage as more particularly outlined
4 in his notice of termination, a copy of which was given to Plaintiff prior to its filing
5 of this action.

6 39. In answer to the allegations contained in Paragraph 39, this answering
7 defendant admits each and every allegation contained therein.

8 40. In answer to the allegations contained in Paragraph 40, this answering
9 defendant admits each and every allegation contained therein.

10 41. In answer to the allegations contained in Paragraph 41, this answering
11 defendant admits each and every allegation contained therein.

12 42. In answer to the allegations contained in Paragraph 42, this answering
13 defendant admits each and every allegation contained therein.

14 43. In answer to the allegations contained in Paragraph 43, this answering
15 defendant admits each and every allegation contained therein.

16 44. In answer to the allegations contained in Paragraph 44, this answering
17 defendant admits each and every allegation contained therein.

18 45. In answer to the allegations contained in Paragraph 45, this answering
19 defendant admits each and every allegation contained therein.

20 46. In answer to the allegations contained in Paragraph 46, this answering
21 defendant admits each and every allegation contained therein.

22 47. In answer to the allegations contained in Paragraph 47, this answering
23 defendant repeats every admission, denial, and affirmative allegation set forth
24 hereinabove in Paragraphs 1 through 46, inclusive.

25 48. In answer to the allegations contained in Paragraph 48, this answering
26 defendant admits each and every allegation contained therein.

27 49. In answer to the allegations contained in Paragraph 49, this answering
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1 defendant admits each and every allegation contained therein.

2 50. In answer to the allegations contained in Paragraph 50, this answering
3 defendant denies each and every allegation contained therein. By way of further
4 answer, this answering defendant affirmatively alleges that, on February 7, 2014, PCC
5 answered the application questions truthfully because PCC did not have any
6 reasonable basis or cause to believe that any wrongful act, event, matter, fact,
7 circumstance, situation, or transaction, might reasonably be expected to result in or
8 be the basis of a future claim against PCC that would be covered by the policy issued
9 by Plaintiffs.

10 51. In answer to the allegations contained in Paragraph 51, this answering
11 defendant denies each and every allegation contained therein.

12 51(a). In answer to the allegations contained in Paragraph 51(a), this answering
13 defendant denies each and every allegation contained therein. By way of further
14 answer, this answering defendant affirmatively alleges that on or about June 17, 2013,
15 Hudson was counseled about his job performance and complained that his supervisor
16 was not fairly distributing accounts. This charge was investigated; the supervisor was
17 discharged; and the accounts were re-distributed. A few days later, Hudson expressed
18 satisfaction with the resolution. In addition, during that meeting, Hudson expressed
19 an opinion that PCC was doing something illegal, but when asked to specifically
20 identify the practices that he thought were illegal or questionable, he shrugged his
21 shoulders and refused to provide any further response or details. By way of further
22 answer, nothing in the interview with Hudson on June 17, 2013 provided PCC or its
23 officers or directors any reasonable basis or cause to believe that such act constitutes
24 a wrongful act, event, matter, fact, circumstance, situation, or transaction, might
25 reasonably be expected to result in or be the basis of a future claim against PCC that
26 would be covered by the policy issued by Plaintiffs.

27 51(b). In answer to the allegations contained in Paragraph 51(b), this answering
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1 defendant admits each and every allegation contained therein. By way of further
2 answer, this answering defendant denies that the execution of a search warrant by the
3 FBI, the interview of PCC personnel, and the seizure of evidentiary material gave
4 PCC or its officers or directors with any reasonable basis to believe that such act
5 constitutes a wrongful act, event, matter, fact, circumstance, situation, or transaction,
6 might reasonably be expected to result in or be the basis of a future claim against PCC
7 that would be covered by the policy issued by Plaintiffs because said actions had
8 nothing to do with the reason that Hudson, Pole, and McCann were terminated.

9 51(c). In answer to the allegations contained in Paragraph 51(c), this answering
10 defendant admits that on or about September 11, 2013, Shields' counsel met with an
11 Assistant United States Attorney who advised Shields' counsel that the government
12 considered Shields a target. By way of further answer, when Shields' counsel
13 provided the Assistant United States Attorney with additional information, the
14 Assistant United States Attorney refused to communicate further with Shields'
15 counsel because the government had not yet discovered sufficient facts upon which
16 to initiate criminal charges against anyone and the government was continuing to
17 investigate. By way of further answer, this answering defendant denies that any law
18 enforcement agency, including, but not limited to, the F.B.I. and the United States
19 Department of Justice, has ever investigated Defendant Professional Collection
20 Consultants for illegal debt collection practices. By way of further answer, this
21 answering defendant denies that the communications between the Assistant United
22 States Attorney and Shields' counsel provided PCC or its officers or directors any
23 reasonable basis or cause to believe that such act constitutes a wrongful act, event,
24 matter, fact, circumstance, situation, or transaction, might reasonably be expected to
25 result in or be the basis of a future claim against PCC that would be covered by the
26 policy issued by Plaintiffs because said actions had nothing to do with the reason that
27 Hudson, Pole, and McCann were terminated.

1 51(d). In answer to the allegations contained in Paragraph 51(d), this
2 answering defendant has no information or belief on the subjects mentioned therein
3 to enable it to answer the allegations thereof, and, basing its denial on that ground, this
4 answering defendant denies each and every allegation contained therein. By way of
5 further answer, this answering defendant denies these matters and affirmatively
6 alleges that neither PCC or any of its officers or directors had any knowledge given
7 to PCC or its officers or directors that provided a reasonable basis or cause to believe
8 that such act constitutes a wrongful act, event, matter, fact, circumstance, situation,
9 or transaction, might reasonably be expected to result in or be the basis of a future
10 claim against PCC that would be covered by the policy issued by Plaintiffs because
11 said actions had nothing to do with the reason that Hudson, Pole, and McCann were
12 terminated.

13 51(e). In answer to the allegations contained in Paragraph 51(e), this
14 answering defendant has no information or belief on the subjects mentioned therein
15 to enable it to answer the allegations thereof, and, basing its denial on that ground, this
16 answering defendant denies each and every allegation contained therein. By way of
17 further answer, this answering defendant denies these matters about which neither
18 PCC or any of its officers or directors had any knowledge given to PCC or its officers
19 or directors any reasonable basis or cause to believe that such act constitutes a
20 wrongful act, event, matter, fact, circumstance, situation, or transaction, might
21 reasonably be expected to result in or be the basis of a future claim against PCC that
22 would be covered by the policy issued by Plaintiffs because said actions had nothing
23 to do with the reason that Hudson, Pole, and McCann were terminated..

24 52. In answer to the allegations contained in Paragraph 52, this answering
25 defendant denies each and every allegation contained therein.

26 53. In answer to the allegations contained in Paragraph 53, this answering
27 defendant denies each and every allegation contained therein.

1 54. In answer to the allegations contained in Paragraph 54, this answering
2 defendant denies each and every allegation contained therein.

3 55. In answer to the allegations contained in Paragraph 55, this answering
4 defendant denies that Western World has any grounds for rescission of its policy, and
5 agrees that it will accept the restoration of any insurance premiums paid if the Court
6 finds in favor of Plaintiff.

7 56. In answer to the allegations contained in Paragraph 56, this answering
8 defendant denies that Plaintiff is entitled to an order rescinding its policy or that the
9 policy is void *ab initio*.

10 57. In answer to the allegations contained in Paragraph 57, this answering
11 defendant denies each and every allegation contained therein.

12 58. In answer to the allegations contained in Paragraph 58, this answering
13 defendant repeats every admission, denial, and affirmative allegation set forth
14 hereinabove in Paragraphs 1 through 57, inclusive.

15 59. In answer to the allegations contained in Paragraph 59, this answering
16 defendant admits each and every allegation contained therein.

17 60. In answer to the allegations contained in Paragraph 60, this answering
18 defendant denies each and every allegation contained therein. By way of further
19 answer, this answering defendant alleges that there is coverage and that Plaintiff has
20 a duty to defend PCC under its policy with respect to the Hudson, Pole, and McCann
21 claims.

22 61. In answer to the allegations contained in Paragraph 61, this answering
23 defendant denies each and every allegation contained therein. By way of further
24 answer, this answering defendant affirmatively alleges that at the time the application
25 for coverage was completed, this answering defendant had no knowledge that either
26 Pole or McCann had been whistleblowers. In addition, at his termination conference,
27 Hudson told PCC that he had not been a whistleblower and that someone other than
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1 him had initiated proceedings before the F.B.I.

2 62. In answer to the allegations contained in Paragraph 62, this answering
3 defendant denies each and every allegation contained therein. By way of further
4 answer, this answering defendant alleges that there is coverage and that Plaintiff has
5 a duty to defend PCC under its policy with respect to the Hudson, Pole, and McCann
6 claims.

7 63. In answer to the allegations contained in Paragraph 63, this answering
8 defendant denies each and every allegation contained therein. By way of further
9 answer. This answering defendant affirmatively alleges that none of the Hudson, Pole,
10 or McCann claims are interrelated claims because the termination of Hudson, Pole,
11 and McCann had nothing to do with the FBI action against PCC, the federal grand
12 jury investigation, or the investigation by the United States Attorney's Office. This
13 answering defendant further alleges that none of the Hudson, Pole, or McCann claims
14 arise from the same facts, circumstances, situations, events transaction, causes, or
15 series of casually or logically connected facts, circumstances, situations, events,
16 transactions, or causes as the Federal Claims. The reasons Hudson, Pole, and McCann
17 were terminated is more particularly described hereinafter in Paragraph 82A.

18 64. In answer to the allegations contained in Paragraph 64, this answering
19 defendant denies each and every allegation contained therein.

20 65. In answer to the allegations contained in Paragraph 65, this answering
21 defendant repeats every admission, denial, and affirmative allegation set forth
22 hereinabove in Paragraphs 1 through 64, inclusive.

23 66. In answer to the allegations contained in Paragraph 66, this answering
24 defendant admits each and every allegation contained therein.

25 67. In answer to the allegations contained in Paragraph 67, this answering
26 defendant admits that Western World has asked the Court to declare that there is no
27 potential for coverage and that Western World has no duty to defend under the policy,
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1 but this answering defendant denies that there is any basis in law or fact for this Court
2 to grant these requests of Western World. By way of further answer, this answering
3 defendant requests this Court to determine there is coverage and a duty to defend with
4 respect to the Hudson, Pole, and McCann claims.

5 68. In answer to the allegations contained in Paragraph 68, this answering
6 defendant denies each and every allegation contained therein. By way of further
7 answer, this answering defendant affirmatively alleges that at the time the application
8 for coverage was completed, this answering defendant had no knowledge that either
9 Pole or McCann had been whistleblowers.

10 69. In answer to the allegations contained in Paragraph 69, this answering
11 defendant denies each and every allegation contained therein. By way of further
12 answer, this answering defendant alleges that there is coverage and that Plaintiff has
13 a duty to defend PCC under its policy with respect to the Hudson, Pole, and McCann
14 claims.

15 70. In answer to the allegations contained in Paragraph 70, this answering
16 defendant denies each and every allegation contained therein. By way of further
17 answer. This answering defendant affirmatively alleges that none of the Hudson, Pole,
18 or McCann claims are interrelated claims because none of said claims have anything
19 to do with the FBI action against PCC, the federal grand jury investigation, or the
20 investigation by the United States Attorney's Office. This answering defendant further
21 alleges that none of the Hudson, Pole, or McCann claims arise from the same facts,
22 circumstances, situations, events transaction, causes, or series of casually or logically
23 connected facts, circumstances, situations, events, transactions, or causes as the
24 Federal Claims. The reasons Hudson, Pole, and McCann were terminated is more
25 particularly described hereinafter in Paragraph 82A.

26 71. In answer to the allegations contained in Paragraph 71, this answering
27 defendant denies each and every allegation contained therein.

1 FIRST AFFIRMATIVE DEFENSE - ESTOPPEL

2 72. Plaintiff is estopped from asserting this claim because Plaintiff has been
3 untimely in asserting its claim. Plaintiff was notified about all of the facts of this claim
4 on July 7, 2014 as alleged in paragraph 40 of Plaintiff's Complaint. However, Plaintiff
5 failed to present this claim until the day of the mediation with Hudson on January 13,
6 2015. By the time Plaintiff tendered this claim, Plaintiff had engaged attorneys for
7 Defendant at a substantial cost to Defendant, which fees have virtually exhausted
8 Plaintiff's retainage. Had Plaintiff timely notified Defendant of this claim, Defendant
9 would have defended the underlying claim of Hudson in house with corporate
10 counsel, thereby saving the fees paid to the attorneys selected by Plaintiff.

11 73. Furthermore, by delaying in presenting this claim, Plaintiff caused
12 Defendant to retain defense counsel instead of defending this case in house, which
13 notified Hudson, McCann and Pole their claims would be covered by insurance.

14 SECOND AFFIRMATIVE DEFENSE - UNCLEAN HANDS

15 74. Plaintiff and Counter-Claim Defendant mishandled the claims of Hudson,
16 Pole, and McCann as described hereinabove and hereinafter in Paragraphs 75 - 88,
17 which are incorporated herein by reference. As such, Plaintiff and Counter-Claim
18 Defendant come before this Court with unclean hands and are therefore not eligible
19 for the equitable remedy of rescission which Plaintiff and Counter-Claim Defendant
20 is alleging.

21 W H E R E F O R E, Defendant prays for judgment, according to proof, as
22 follows:

- 23 1. That judgment herein be awarded to Defendant;
 - 24 2. That Plaintiff take nothing by way of its Complaint;
 - 25 3. For costs of suit incurred herein;
 - 26 4. For such other and further relief as the Court deems just and proper.
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1 AND AS A COUNTER-CLAIM, DEFENDANT
2 PROFESSIONAL COLLECTION CONSULTANTS ALLEGES:

3 THE PARTIES

4 75. Defendant and Counter-Claimant Professional Collection Consultants is a
5 California corporation licensed to transact business in the State of California.

6 76. At all times mentioned herein, Plaintiff and Counter-Claim Defendant
7 Western World Insurance Company is an insurer that is authorized to issue and deliver
8 policies of liability in the State of California.

9 THE STORY

10 77. On or about February 17, 2014, Defendant and Counter-Claimant purchased
11 a policy of Directors, Officers, Insured Entity and Employment Practices liability
12 insurance policy, (Policy Number PRL 80000034) from the Plaintiff and Counter-
13 Claim Defendant. The policy had effective dates of coverage from February 17, 2014
14 to February 17, 2015. A true and correct copy of the application and policy are
15 attached as Exhibits A and B, respectively, to the Complaint herein filed by Plaintiff
16 and Counter-Claim Defendant. Said insurance policy was actually delivered by
17 Plaintiff and Counter-Claim Defendant to Defendant and Counter-Claimant.

18 78. On or about July 7, 2014, Gregory Hudson demanded mediation with
19 Defendant and Counter-Claimant as a prerequisite to initiate litigation arising from
20 Defendant and Counter-Claimant's purported retaliation and discrimination and
21 wrongful termination of Hudson.

22 79. On or about July 11, 2014, Defendant and Counter-Claimant provided
23 notice to Plaintiff and Counter-Claim Defendant of Hudson's demand for mediation.
24 Plaintiff and Counter-Claim Defendant agreed to defend Defendant and Counter-
25 Claimant against Hudson's claim on August 7, 2014. At the time Plaintiff and
26 Counter-Claim Defendant agreed to defend Defendant and Counter-Claimant against
27 Hudson's claim on August 7, 2014, Plaintiff and Counter-Claim Defendant had full
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1 and complete knowledge of all of the details alleged in Plaintiff and Counterclaim
2 Defendant's Complaint.

3 80. On or about January 14, 2015, Beblen Pole and Lisa McCann also
4 demanded mediation with Defendant and Counter-Claimant as a prerequisite to
5 initiating litigation arising from Defendant and Counter-Claimant's purported
6 retaliation and discrimination against and wrongful termination of Pole and McCann.

7 81. On or about January 15, 2015, Defendant and Counter-Claimant provided
8 notice to Plaintiff and Counter-Claim Defendant of the demand for mediation by Pole
9 and McCann on January 15, 2015. Plaintiff and Counter-Claim Defendant agreed to
10 defend Defendant and Counter-Claimant against the Pole and McCann claims on
11 January 28, 2015. At the time Plaintiff and Counter-Claim Defendant agreed to defend
12 Defendant and Counter-Claimant against the claims of Pole and McCann, Plaintiff and
13 Counter-Claim Defendant had full and complete knowledge of all of the details
14 alleged in Plaintiff and Counter-Claim Defendant's Complaint.

15 82. Defendant and Counter-Claimant is informed and believes and thereon
16 alleges that Plaintiff and Counter-Claim Defendant failed to conduct a prompt, full,
17 and complete investigation of the facts and circumstances giving rise to the claims
18 asserted by Hudson, Pole, and McCann. Had Plaintiff and Counter-Claim Defendant
19 conducted a prompt, full, and complete investigation of the facts and circumstances
20 giving rise to the claims asserted by Hudson, Pole, and McCann, Plaintiff and
21 Counter-Claim Defendant would have discovered that:

22 (A) The termination giving rise to the claims of Hudson, Pole, and McCann
23 have nothing to do with the search warrant served by the F.B.I, in August, 2013 or the
24 investigation by the Federal Government in connection therewith and are based on
25 completely unrelated matters. Plaintiff and Counter-Claim Defendant would have
26 discovered that Hudson was terminated for intentionally making an unauthorized
27 withdrawal of funds from the trust account of an attorney for a debtor and then
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1 attempted to conceal the withdrawal from management of Defendant and Counter-
2 Claimant; Pole was terminated for twice attempting to mail a batch of 25 to 100 illegal
3 collection notices that she had been told not to mail because they were illegal and then
4 causing a confrontation with multiple supervisors when she was counseled for this
5 misconduct; and McCann, who held the key position of accountant and human
6 resources director in a small company, went out on disability leave and was terminated
7 after she had exhausted her leave by several months and, in addition thereto, was
8 unable to provide a date on which she would return to work.

9 (B) That while Hudson reported in 2007 what he believed to be illegal conduct
10 to the California Employment Development Department, no such illegal conduct was,
11 or ever had occurred and was also not known to Defendant and Counter-Claimant
12 when it applied for the insurance policy at issue herein;

13 (C) That while Hudson did tell other non-management co-workers that he
14 believed Defendant and Counter-Claimant was illegally obtaining and making use of
15 private financial information of debtors which would eventually force Defendant and
16 Counter-Claimant to go out of business, those statements that Hudson made to non-
17 management co-workers were not true. More importantly, none of the non-
18 management co-workers to whom Defendant and Counter-Claim Defendant made
19 those statements relayed those statements to the management of Defendant and
20 Counter-Claimant before Defendant and Counter-Claimant applied for the insurance
21 policy at issue herein;

22 (D) That while in August, 2013, the F.B.I. did conduct a search of the offices
23 of Defendant and Counter-Claimant, seize evidentiary material, and conduct
24 interviews with certain employees, including Hudson, these events had nothing to do
25 with the termination of Hudson, Pole, or McCann as described in more detail in
26 Paragraph 81(A) hereinabove.

27 (E) That while on September 11, 2013 counsel for the President of the
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1 Defendant and Counter-Claimant Todd Shields, was advised by the Assistant United
2 States Attorney that Shields was the target of a criminal investigation, the
3 investigation was not for alleged illegal debt collection practices. In addition, based
4 on the information provided to the Assistant United States Attorney by the counsel for
5 Shields, no charges have been filed because the Assistant United States Attorney
6 realized that the government was unable to prove that either Shields, Defendant and
7 Counter-Claimant, or any of its employees had violated any criminal laws.

8 (F) That on or about November 26, 2013, Hudson was served with a Federal
9 Grand Jury Subpoena to testify and produce documents concerning allegations that
10 Defendant and Counter-Claimant had illegally obtained financial and employment
11 information about debtors from California Employment Development Department and
12 banks. While this is true, these events had nothing to do with the termination of
13 Hudson, Pole, or McCann as described in more detail in Paragraph 82(A) hereinabove.
14 Furthermore, Hudson himself was the person who obtained financial and employment
15 information from Bank of America and G.M.A.C., but his obtaining of such
16 information was not believed to be illegal by either Defendant and Counter-Claimant
17 or Hudson when he obtained such information;

18 (G) That on or about December 10, 2013, Hudson was interviewed by an
19 attorney from the United States Attorneys Office and produced documents. While this
20 is true, these events had nothing to do with the termination of Hudson, Pole, or
21 McCann as described in more detail in Paragraph 82(A) hereinabove.

22 83. The case upon which Plaintiff and Counter-Claim Defendant relies on as
23 justification for filing this Complaint, *Endurance American Speciality Insurance*
24 *Company vs. Michael Monnensen*, 2011 U.S. Dist Lexis 158111,
25 2013 W.L. 6623869, is an unpublished opinion of the Ninth Circuit Court of Appeals
26 and therefore cannot be cited as authority under the Federal Rules of Court. In
27 addition, in the *Endurance* case, the employee had already been terminated and had
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1 already filed a whistleblower complaint when the company submitted an application
2 that failed to disclose the either the whistleblower complaint or the claim of the
3 employee for wrongful termination that was actually pending when the company
4 submitted its application.

5 84. Subsequently, Plaintiff and Counter-Claim Defendant reversed their
6 acceptance of the tender of defense of the claims of Hudson, Pole, and McCann and
7 initiated this action to rescind the policy.

8 85. Defendant and Counter-Claimant is informed and believes and therein
9 alleges that Plaintiff and Counter-Claim Defendant failed and refused to:

10 (A) Conduct a prompt, full and complete investigation of the claims in addition
11 to those matters that were alleged in the pleadings filed by Hudson and in the requests
12 for mediation filed by Pole and McCann;

13 (B) Defend its insureds from the claims asserted by Hudson, Pole, and McCann;

14 (C) Indemnify its insureds from the claims asserted by Hudson, Pole, and
15 McCann;

16 (D) Conduct any investigation after it rejected the tender of defenses and
17 Defendant and Counter-Claimant advised Plaintiff and Counter-Claim Defendant that
18 they had failed to conduct a proper investigation into the circumstances surrounding
19 the claims asserted by Hudson, Pole, and McCann;

20 (E) Advise Defendant and Counter-Claimant in a timely matter regarding the
21 status of the claim and the need to obtain independent legal representation;

22 86. Thereafter, Plaintiff and Counter-Claim Defendant provided Defendant and
23 Counter-Claimant with counsel to defend the claims of Hudson, Pole, and McCann.
24 However, since the policy had a \$50,000 retainage for claim and defense costs for
25 each claim (for a total of \$150,000 retainage for the Hudson, Pole, and McCann
26 claims), Defendant and Counter-Claimant was actually paying all the fees billed by
27 the defense counsel selected by Plaintiff and Counter-Claim Defendant. Had Plaintiff
28

1 and Counter-Claim Defendant immediately notified Defendant and Counter-Claimant
2 that it was denying coverage, Defendant and Counter-Claimant would have elected
3 to defend all of these claims in house with its in house law firm.

4 87. Plaintiff and Counter-Claim Defendant waited until January 13, 2015 to
5 advise Defendant and Counter-Claimant that it had changed its mind and was denying
6 coverage of the Hudson claim. Plaintiff and Counter-Claim Defendant advised
7 Defendant and Counter-Claimant of its decision on the day of the mediation with
8 Hudson, some seven (7) months *after* Plaintiff and Counter-Claim Defendant had full
9 knowledge of all of the facts surrounding the Hudson claim.

10 88. The reason Plaintiff and Counter-Claim Defendant waited seven months
11 until the eve of mediation to advise Defendant and Counter-Claimant that it had
12 changed its mind and was denying coverage of the Hudson claim was to pressure
13 Defendant and Counter-Claimant and Hudson into reaching a settlement. Plaintiff and
14 Counter-Claim Defendant insisted that Hudson and his attorney be notified of the
15 denial of coverage to gain an advantage in negotiating a settlement, but Defendant and
16 Counter-Claimant refused to allow Plaintiff and Counter-Claim Defendant to make
17 this disclosure. In retaliation, Plaintiff and Counter-Claim Defendant was only willing
18 to offer \$50,000.00 to settle the Hudson matter, which was not a reasonable offer with
19 any likelihood of being accepted by Hudson. It would have been better had Plaintiff
20 and Counter-Claim Defendant made no settlement offer at all instead of making one
21 that was insulting and unreasonable.

22 89. As a proximate result of the delay of Plaintiff and Counter-Claim Defendant
23 in denying coverage, the defense of the Hudson claim has been hopelessly
24 compromised. Defendant and Counter-Claimant has been forced to pay almost
25 \$50,000.00 in fees to defense counsel selected by Plaintiff and Counter-Claim
26 Defendant, an expense Defendant and Counter-Claimant would not have incurred had
27 Plaintiff and Counter-Claim Defendant timely notified Defendant and Counter-

1 Claimant that it was denying the Hudson claim. In addition, Hudson would not have
 2 been notified that Defendant and Counter-Claimant had insurance coverage by the
 3 failure of Defendant and Counter-Claimant to defend his claim with in house counsel.
 4 Finally, Hudson would not have been justifiably insulted and further enraged by the
 5 mediation proceedings and the presentation of a ridiculous offer by Plaintiff and
 6 Counter-Claim Defendant.

7 90. Defendant and Counter-Claimant performed all of its obligations under the
 8 policies identified herein.

9
 10 **FIRST CAUSE OF ACTION FOR ESTOPPEL
 TO RESCIND POLICY**

11 91. Defendant and Counter-Claimant incorporates each and every admission,
 12 denial, and affirmative allegation in Paragraphs 75 - 89, hereinabove by reference.

13 92. Plaintiff and Counter-Claim Defendant mishandled the claims of Hudson,
 14 Pole, and McCann as described hereinabove. As such, Plaintiff and Counter-Claim
 15 Defendant is estopped in denying coverage for the claims of Hudson, Pole, or
 16 McCann.

17 **SECOND CAUSE OF ACTION FOR UNCLEAN HANDS**

18 93. Defendant and Counter-Claimant incorporates each and every admission,
 19 denial, and affirmative allegation in Paragraphs 75 - 89, hereinabove by reference.

20 94. Plaintiff and Counter-Claim Defendant has mishandled the claims of
 21 Hudson, Pole, and McCann as described hereinabove. As such, Plaintiff and Counter-
 22 Claim Defendant comes before this Court with unclean hands and is therefore not
 23 eligible for the equitable remedy of rescission which Plaintiff and Counter-Claim
 24 Defendant is alleging.

25 **THIRD CAUSE OF ACTION FOR BREACH OF CONTRACT**

26 95. Defendant and Counter-Claimant incorporates each and every admission,
 27 denial, and affirmative allegation in Paragraphs 75 - 89, hereinabove by reference.

1 96. Defendant and Counter-Claimant is informed and believes, and thereon
2 alleges, that Plaintiff and Counter-Claim Defendant breached its obligation under the
3 policy referenced hereinabove in the following manner:

4 A. By delaying to make a timely determination under all potentially applicable
5 coverages as to whether or not a defense was owed by Plaintiff and Counter-Claim
6 Defendant;

7 B. By failing to conduct a full and complete investigation into the facts and
8 circumstances of the claims asserted against Defendant and Counter-Claimant as
9 alleged herein;

10 C. By failing and refusing to defend Defendant and Counter-Claimant from the
11 claims asserted by Hudson, Pole, and McCann;

12 D. By failing and refusing to indemnify the Defendant and Counter-Claimant
13 from the claims asserted by Hudson, Pole, and McCann;

14 E. By doing each of the acts or omissions alleged hereinabove in THE STORY.

15 97. Defendant and Counter-Claimant is informed and believes that Plaintiff and
16 Counter-Claim Defendant failed and refused to conduct an investigation into the facts
17 and circumstances of the claims asserted against Defendant and Counter-Claimant by
18 Hudson, Pole, and McCann as alleged more particularly hereinabove in THE STORY.
19 As a result of the breaches of contract by Plaintiff and Counter-Claim Defendant to
20 conduct any investigation in the facts and circumstances of the claims asserted against
21 Defendant and Counter-Claimant, Defendant and Counter-Claimant has been
22 damaged, injured, and prejudiced. Defendant and Counter-Claimant has been required
23 to retain counsel and defend itself against the claims asserted against it or, in the
24 alternative, use in house counsel to do so.

25 98. As a result of the failure of Plaintiff and Counter-Claim Defendant to
26 conduct an investigation, the Plaintiff and Counter-Claim Defendant is estopped from
27 relying upon any subsequently discovered information to support rejection of the
28

1 tender of defense by Defendant and Counter-Claimant.

2 99. As a further result of the failure of Plaintiff and Counter-Claim Defendant
3 to conduct an investigation, Plaintiff and Counter-Claim Defendant has waived any
4 obligation on the part of Defendant and Counter-Claimant to cooperate with Plaintiff
5 and Counter-Claim Defendant in the defense of the Hudson, Pole, and McCann
6 claims.

7 100. As a direct and proximate result of the breach by Plaintiff and Counter-
8 Claim Defendant of its obligations under the insurance policy which is the subject of
9 this action, Defendant and Counter-Claimant has been damaged as follows:

10 A. Defendant and Counter-Claimant has been required to retain attorneys to
11 defend itself or to use in house counsel to defend itself from the claims asserted by
12 Hudson, Pole, and McCann;

13 B. Defendant and Counter-Claimant may be required to pay for a settlement or
14 a judgment obtained by Hudson, Pole, or McCann;

15 C. General damages in an amount to be proven at trial.

16 D. Defendant and Counter-Claimant is informed and believes and thereon
17 alleges that the denial of benefits, as alleged in this Counter-Claim, was vexatious and
18 without reasonable cause, as alleged herein. Pursuant to *California Insurance Code*
19 *Section 1619*, Defendant and Counter-Claimant is entitled to reasonable attorney fees
20 incurred in prosecuting this action in an amount to be proved at trial.

21 **THIRD CAUSE OF ACTION FOR BREACH OF**
22 **COVENANT OF GOOD FAITH AND FAIR DEALING**

23 101. Defendant and Counter-Claimant incorporates each and every admission,
24 denial, and affirmative allegation in Paragraphs 75 - 89, hereinabove by reference.

25 102. Defendant and Counter-Claimant is informed and believes and thereon
26 alleges that Plaintiff and Counter-Claim Defendant breached the implied covenant of
27 good faith and fair dealing arising out of the insurance policy which is the subject of
28

1 this action in the following respects:

2 A. Plaintiff and Counter-Claim Defendant unreasonably and without proper
3 cause failed and refused to conduct an investigation into the facts which gave rise to
4 the claims asserted by Hudson, Pole, and McCann;

5 B. Plaintiff and Counter-Claim Defendant unreasonably and narrowly
6 interpreted the insurance policy which is the subject of this action and the application
7 for coverage in connection therewith in a manner calculated to deny benefits to
8 Defendant and Counter-Claimant under the policy, including relying on an
9 unpublished appellate court opinion that was based on completely different facts;

10 C. Plaintiff and Counter-Claim Defendant unreasonably refused to pay for the
11 defense of the claims of Hudson, Pole, and McCann;

12 D. Plaintiff and Counter-Claim Defendant unreasonably refused to pay for
13 settlement of the claims of Hudson, Pole, and McCann;

14 103. The denial of the benefits claimed by Defendant and Counter-Claimant
15 under the policy which is the subject of this action was done by Plaintiff and Counter-
16 Claim Defendant without reasonable cause. Plaintiff and Counter-Claim Defendant
17 knew that a duty to defend was owed to Defendant and Counter-Claimant, yet refused
18 to provide such a defense. As a direct and proximate result of the unreasonable
19 conduct of Plaintiff and Counter-Claim Defendant, Defendant and Counter-Claimant
20 has been forced to retain attorneys or use in house counsel to obtain benefits due them
21 under the policy. Defendant and Counter-Claimant may also be forced to enter into
22 a settlement of the Hudson, Pole, or McCann claims of which Defendant and Counter-
23 Claimant vigorously deny any wrongdoing and/or disputed any liability.

24 104. As a direct result of the tortuous conduct of the Plaintiff and Counter-
25 Claim Defendant, Defendant and Counter-Claimant was damaged and injured.
26 Defendant and Counter-Claimant is therefore entitled to recover:

27 A. Reasonable attorney fees incurred by Defendant and Counter-Claimant in
28

1 obtaining policy benefits in an amount to be proved at time of trial;

2 B. An award of general damages in an amount to be proved at time of trial;

3 C. Any settlement payments made to either Hudson, Pole, or McCann,
4 including the attorney fees incurred in defending each of these claims;

5 105. Defendant and Counter-Claimant is informed and believes, and thereon
6 alleges, that Plaintiff and Counter-Claim Defendant has intentionally engaged in a
7 course of conduct which was intended to oppress the Defendant and Counter-Claimant
8 and dissuade Defendant and Counter-Claimant, and its counsel, from seeking benefits
9 due to Defendant and Counter-Claimant under the policy by threatening and initiating
10 retaliatory litigation and by including material in its Complaint regarding the F.B.I
11 search that Plaintiff and Counter-Claim Defendant know or should have known was
12 false and thereby necessitate the waiver of Fifth Amendment rights by officers of
13 Defendant and Counter-Claimant to enable Defendant and Counter-Claimant to
14 defend this action and prosecute this Counter-Claim.

15 106. The refusal of the Plaintiff and Counter-Claim Defendant to carry out its
16 obligations under the insurance policy to investigate, defend, indemnify, and to
17 properly and timely communicate its coverage position to its insureds, and the acts of
18 its agents were all done under a conscious disregard of the rights of the Defendant and
19 Counter-Claimant to receive the benefits due to it under the policy. These acts were
20 done with the knowledge and approval and ratification of the officers of the Plaintiff
21 and Counter-Claim Defendant. These acts continued even after the Defendant and
22 Counter-Claimant protested to the Plaintiff and Counter-Claim Defendant and
23 Defendant and Counter-Claimant was powerless to obtain from Plaintiff and Counter-
24 Claim Defendant compliance with its obligations. Defendant and Counter-Claimant
25 is therefore entitled to recover punitive damages.

1 W H E R E F O R E, Defendant and Counter-Claimant prays for judgment,
2 according to proof, as follows:

3 1. For damages for breach of contract, including costs of defense incurred by
4 Defendant and Counter-Claimant in its defense of the claims of Hudson, Pole, and
5 McCann and the amounts, if any, paid in settlement of those claims;

6 2. For general and compensatory damages including, but not limited to, injuries
7 resulting from humiliation, mental anguish, and emotional distress;

8 3. For attorney fees incurred in bringing this action pursuant to
9 *California Insurance Code Section 1619*;

10 4. For attorney fees incurred in obtaining policy benefits, as provided by law;
11 and

12 5. For prejudgment interest in an amount to be proved at time of trial;

13 6. For punitive damages in an amount sufficient to deter and make an example
14 of Plaintiff and Counter-Claim Defendant.

15 7. For such other and further relief as the Court may deem just and proper.

16
17 Dated: April 17, 2015

18
19 LAW OFFICES OF CLARK GAREN

20 By

21 /s/CLARK GAREN

22 CLARK GAREN,
23 ATTORNEY FOR DEFENDANT AND
24 COUNTER-CLAIMANT
25 PROFESSIONAL COLLECTION
26 CONSULTANTS
27
28

1 DEMAND FOR JURY TRIAL

2 Defendant and Counter-Claimant PROFESSIONAL COLLECTION

3 CONSULTANTS hereby demands a jury trial.

4 Dated: April 17, 2015

5 LAW OFFICES OF CLARK GAREN

6 By

7 /s/CLARK GAREN

8 CLARK GAREN,
9 ATTORNEY FOR DEFENDANT AND
10 COUNTER-CLAIMANT
11 PROFESSIONAL COLLECTION
12 CONSULTANTS
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CERTIFICATE OF SERVICE

I certify that on April 17, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Central District of California, Western Division by using the CM/ECF system.

I further certify that all of the participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Clark Garen
CLARK GAREN